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In the Supreme Court of the United States

OCTOBER TERM, 1942

CLAIMANTS FOR BENEFITS UNDER THE MICHIGAN UNEMPLOYMENT COMPENSATION ACT,
Petitioners,

vs.

CHRYSLER CORPORATION, a Delaware corporation,

and

THE APPEAL BOARD OF THE MICHIGAN UNEMPLOYMENT COMPENSATION COMMISSION, et al,
Respondents.

BRIEF OF RESPONDENT, CHRYSLER CORPORATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

STATEMENT OF THE CASE*

Petitioners are claimants under the Michigan Unemployment Compensation Act (Act No. 1, Michigan Public Acts of 1936 extra session, as amended by Act No. 347, Public Acts of 1937, and by Act No. 324, Public Acts of 1939; Mason's 1940 Cumulative Supplement to the Compiled Laws of Michigan 1929, Secs. 8485-41 to 8485-103), for

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*The five-volume record in *Chrysler Corporation v. Smith*, 297 Mich. 438, by stipulation of the parties was made a part of the record in the cause below (Record pp. 7-8). These volumes have not been reprinted but the required number of copies have been filed with the clerk of

unemployment compensation benefits because of their unemployment at the plants of the respondent, Chrysler Corporation, during the period commencing with the week ending October 14, 1939, and terminating with the week ending December 2, 1939 (Record pp. 10, 55). Petitioners at that time were represented by the United Automotive Workers of America, affiliated with the Congress of Industrial Organizations (now United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations), as collective bargaining agent, which was conducting a strike in the plants of the respondent (Record pp. 11, 55, 189). In the decision which the petitioners now seek to review, the Supreme Court of Michigan, construing Section 29 of the Michigan Unemployment Compensation Act, ruled that the petitioners were disqualified for benefits on the ground that their unemployment was due to a labor dispute which was actively in progress in the establishment in which they had last been employed, and that they were directly interested in the labor dispute which caused the stoppage of work. *Chrysler Corporation v. Unemployment Compensation Commission,* 301 Mich. 351, 360-4 (Record pp. 187-190).

In so deciding, the Supreme Court of Michigan followed its own decision in the earlier case of *Chrysler Corporation v. Smith,* 297 Mich. 438, in which certain other Chrysler employees, selected as representative or typical claimants, had sought benefits for unemployment resulting from the same strike (Record pp. 182, 190). In that case

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this Court. In this brief references to the part of the record consisting of these five volumes are by volume and page; references to the remainder of the record consisting of the volume of 180 pages also used in the Court below and of the proceedings and opinion in the Court below are by page only.

the Supreme Court of Michigan had determined that the claimants there were directly interested in the same labor dispute in the same establishment and, hence, were disqualified. During the course of the proceedings which resulted in this earlier decision of *Chrysler Corporation v. Smith,* 297 Mich. 438, the Circuit Court of Ingham County, Michigan, had made an order staying payment of unemployment benefits to all claimants, including the petitioners, "pending final determination by the courts" (Record Vol. I, pp. 56-7, 99-100). The claimants in that case had moved to vacate the stay (Record Vol I, pp. 81-7), and when the Circuit Court of Ingham County, Michigan, had denied the motion, they petitioned the Supreme Court of Michigan for a writ of mandamus to compel the Circuit Judge to vacate the stay. This writ the Supreme Court of Michigan denied, *Smith v. Ingham Circuit Judge,* 297 Mich. 478, stating that the issues raised in *Chrysler Corporation v. Smith,* 297 Mich. 438, had been decided.

The Supreme Court of Michigan thus, before the decision which petitioners now seek to review, had determined that claimants for benefits under the Michigan Unemployment Compensation Act for unemployment arising out of the UAW-CIO strike at Chrysler Corporation in 1939, who were directly interested in that labor dispute, were disqualified from receiving benefits under the court's construction of that act. That court also had determined that this Michigan statute did not authorize the administrative authorities to pay benefits to claimants whom the Supreme Court of Michigan had determined to be so disqualified. *Chrysler Corporation v. Smith,* 297 Mich. 438, 451-3; *Smith v. Ingham Circuit Judge,* 297 Mich. 478. Both of the preceding decisions of the Supreme Court of Michigan and its decision in the case below rest on the Court's construction of this Michigan statute. The Michigan Court

construed the statute to mean (1) that Chrysler employees who were represented by the UAW-CIO as collective bargaining agent, were directly interested in the labor dispute then existing between Chrysler Corporation and the UAW-CIO, out of which the unemployment arose, and, therefore, were disqualified under the statute from receiving benefits, and (2) that this state statute did not authorize payment of benefits to claimants who, under the Court's construction of the statute, were disqualified to receive benefits. *Chrysler Corporation v. Unemployment Compensation Commission,* 301 Mich. 351, 354, 358, 362-4 (Record pp. 182, 185, 188-190).

When the petitioners moved the Supreme Court of Michigan for a certificate and statement that they had asserted their rights to unemployment benefits by virtue of Section 34 of the Michigan Unemployment Compensation Act, and that the Supreme Court of Michigan had held that provision "to be invalid on the sole ground that it was violative to the due process clause of the Fourteenth Amendment to the Constitution of the United States," the Supreme Court denied that motion (Record pp. 192-4).

For the further information of this Court, respondent has set forth in the appendix a more detailed statement of the procedural background of the case below.

II.

SUMMARY OF THE ARGUMENT

(A) The decision of a Federal question was not necessary to the determination of the cause by the court below, and this judgment rests upon a non-Federal ground adequate to support it.

(B) The denial of unemployment compensation benefits to petitioners was based on the construction given by the court to the provisions of the Michigan Unemployment Compensation Act.

III.

ARGUMENT

(A) The decision of a Federal question was not necessary to the determination of the cause by the court below, and this judgment rests upon a non-Federal ground adequate to support it.

The decisions of this Court are clear that where judgment in the State court rests upon a non-Federal ground adequate to support it, this Court will not take jurisdiction. *Lynch v. New York ex rel. Pierson,* 293 U. S. 52, 54; *Honeyman v. Hanan,* 300 U. S. 14, 18, 302 U. S. 375, 378; *New York City v. Central Savings Bank,* 306 U. S. 661; *State of Washington v. Inland Empire Refineries, Inc.,* 311 U. S. 713; *Weber, President of the American Federation of Musicians v. Opera on Tour, Inc.,* 314 U. S. 615.

The construction by the State court of a State statute is a question of State law, does not present a Federal question, and is binding on this Court. *Quong Ham Wah Co. v. Industrial Accident Commission of California,* 255 U. S. 445; *Neblett v. Carpenter,* 305 U. S. 297, 302.

Section 29(d) of the Michigan Unemployment Compensation Act (Mason's 1940 Cumulative Supplement to the Compiled Laws of Michigan 1929, Sec. 8485-69), reads in part as follows:

> "Sec. 29. *Disqualification for benefits.* An individual shall be disqualified for benefits:
>
> * * *
>
> "(d) For any week with respect to which his total or partial unemployment is due to a labor dispute which is actively in progress in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be

directly involved in a labor dispute, unless it is established:

* * *

"(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection.

* * *"

The court below held that the petitioners are disqualified under this section of the Act. After discussing how the labor trouble arose from which the unemployment resulted it said (301 Mich. 351, at page 362; Record p. 189):

"* * * This, we think, brings appellants' case squarely within Section 29 of the Act (Comp. Laws Supp. 1940, Sec. 8485-69, Stat. Ann. 1940 Cum. Supp. Sec. 17.531) which defines the circumstances under which an employee is disqualified from receiving benefits under the act. * * *"

And at page 364 (Record p. 190) the court said:

"Because of the importance of decision herein we have given quite detailed consideration to the material claims of appellants rather than to have summarily disposed of this appeal by holding all controlling questions now presented were passed upon in *Chrysler Corp. v. Smith, supra,* adversely to appellants, as was held by the circuit judge and in part made the ground of his decision. The judgment entered in the circuit court is affirmed. * * *"

In the case of *Chrysler Corporation v. Smith,* 297 Mich. 438, thus adverted to, the Supreme Court of Michigan, referring to the disqualification of claimants under Section 29(d) of the Michigan Unemployment Compensation Act, arising out of the same strike, said at page 451:

> "We hold that the Dodge Main plant and the mentioned synchronized units constitute one 'establishment' within the meaning of that term as employed in the act, and claimants are disqualified from unemployment compensation by reason of the fact that their claims are based upon unemployment during a period in which a labor dispute, in which they were directly involved, was in active progress, and caused stoppage of operations in the establishment where they were employed."

The Supreme Court of Michigan in holding petitioners disqualified for benefits under this Michigan statute, proceeded strictly in accordance with Section 38 of that statute. (Mason's 1940 Cumulative Supplement to the Compiled Laws of Michigan 1929, Sec. 8485-78.) This relates to review by the courts of decisions of the Appeal Board of the Michigan Unemployment Compensation Commission. Section 38 reads as follows:

> "Sec. 38. *Review of questions of fact and law by court.* The findings of fact made by the appeal board acting within its powers, if supported by the great weight of the evidence, shall, in the absence of fraud, be conclusive, but the circuit court of the county in which the claimant resides or the circuit court for the county of Ingham shall have power to review questions of fact and law on the record made before the appeal board involved in any such final decision or determination but said court may reverse such decision of said appeal board upon a question of fact only if it finds that said decision of the appeal board is contrary to the great weight of the evidence: Provided, That application is made within 15 days after such determination by certiorari or by any other method permissible under the rules and practices of the circuit courts of this state, and to make such further orders in respect thereto as justice may require. The commission shall be deemed to be a party to any judicial action involving any such

> decision. An appeal may be had from the decision of said circuit court in the same manner as provided by the laws of this state with respect to appeals from circuit courts."

Petitioners in their brief do not question that the employer is an interested party and that he has a right to appeal to the courts. The Michigan Supreme Court in this case and also in the case of *Chrysler Corporation v. Smith,* 297 Mich. 438, construes Section 38 both in terms and by its method of proceeding under that section. In this case, that Court in considering an argument of petitioners that the facts in this case differ from those in *Chrysler Corporation v. Smith,* 297 Mich. 438, says (301 Mich. 351, at page 361; Record p. 188):

> "* * * we are of the opinion that the determination of the circuit court in this respect must be affirmed on the ground that the determination of the board of appeals was contrary to the great weight of evidence which discloses the true facts in this case. * * *"

After quoting the language of Section 38 in order to show the character and scope of review by the courts, the court goes on, on page 362 (Record p. 188), to say that:

> "The above-quoted finding of facts by the appeal board is not a full and fair statement of the facts as we find them conclusively disclosed by this record. * * *"

And it then proceeds to state what in its opinion is "the only fair conclusion which can be reached."

In *Chrysler Corporation v. Smith,* 297 Mich. 438, the court said at page 453:

> "Claimants question the right of the Chrysler Corporation to appear and contest their right to awards. This requires but short answer. As a contributor to the fund, having an interest in its proper disbursement, it was the right of the corporation, if

not its duty, to see that the purpose and full integrity of the fund was preserved."

In the decision below the Supreme Court of Michigan said (301 Mich. 351, at page 358; Record p. 185):

> "We are not in accord with appellants' contention, as stated in their brief, that following double affirmation: 'Subsequent appeals * * * under the act were *merely* for the purpose of determining whether the experience record of the Chrysler Corporation should be charged with payments so made.' The act does not expressly so provide, and it should not be so construed. Instead of the right of such appeals being granted solely or 'merely' for the purpose of enabling the Chrysler Corporation to have determination of whether its experience record should be charged with the payments made, we think this is but another reason for granting the right of subsequent appeals in addition to that of protecting the compensation fund provided by the Chrysler Corporation and others from maladministration or unlawful dissipation."

The proviso of Section 34 of the Michigan Unemployment Compensation Act (Mason's 1940 Cumulative Supplement to the Compiled Laws of Michigan 1929, Sec. 8485-74)* reads as follows:

> "* * * Provided, That if the final decision of a referee affirms the initial or an amended determination, or the appeal board affirms the final decision of a referee, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's experience record shall be charged with benefits so paid."

*This proviso is no longer contained in the Michigan Unemployment Compensation Act, having been eliminated on amendment of Section 34 by Act 364, Michigan Public Acts, 1941, effective June 19, 1941. (Mason's 1942 Supplement to the Compiled Laws of Michigan, 1929, Sec. 8485-74).

In *Chrysler Corporation v. Smith,* 297 Mich. 438, the Supreme Court of Michigan, after quoting the proviso, construed it as inapplicable, at page 453, as follows:

> "* * * The circuit judge held the provision inapplicable, and we join in such holding without spending time in an endeavor to note its place, if any, under other circumstances."

Since we have shown that the court below determined the facts in this case to be not different from those in *Chrysler Corporation v. Smith,* 297 Mich. 438, the proviso is equally inapplicable in this case.

The conclusion is clear that the judgment of the Michigan Supreme Court disqualifying the claimants to receive benefits and denying any payment to them does not rest on any Federal question. On the contrary no Federal question was necessary to the determination, and the judgment rests upon non-Federal grounds clearly adequate to support it. Jurisdiction to issue a writ of certiorari, therefore, is lacking. *Lynch v. New York ex rel. Pierson, supra.*

(B) The denial of unemployment compensation benefits to petitioners was based on the construction given by the court to the provisions of the Michigan Unemployment Compensation Act.

Petitioners' brief proceeds on the assumption that the Supreme Court of Michigan has construed the proviso of Section 34 of the Michigan Unemployment Compensation Act, above quoted, to give them a right to payment of benefits notwithstanding the court having held them to be disqualified. It assumes further that payment of benefits has been denied to them only because that court held this section "to be violative of the due process clause of the Fourteenth Amendment of the United States Consti-

tution." (Petition for Writ of Certiorari, Statement of Jurisdiction, p. 5.) The opinion of the Supreme Court of Michigan cannot be so interpreted. Its discussion of constitutional issues is confined to the invalidity of the proviso of Section 34 as "sought to be applied" by petitioners (301 Mich. 351, at page 355; Record p. 183), and the court's conclusion in this respect rests primarily on the provisions of the Michigan Constitution.

Discussing the invalidity of the proviso in Section 34, if construed to give petitioners a right to payment of benefits without regard to the court's decision that they were disqualified, the court refers to the right to due process "afforded by both the State Constitution and the Federal Constitution," and concludes (301 Mich. 351, at pages 356-7; Record p. 184):

> "Regardless of what useful and lawful purpose the double affirmation clause of section 34 of the unemployment compensation act might serve under other circumstances, as claimants wish to have it applied in the instant case it is unconstitutional in that if so applied it would deprive plaintiff of due process of law. What constitutes due process of law, when property rights are involved, is not a new question in this jurisdiction."

In support of this conclusion the court cites only *Hendershott v. Rogers,* 237 Mich. 338, 348, construing the Michigan Constitution.

The Supreme Court of Michigan further concludes that to adopt the petitioners' construction of the Michigan Unemployment Compensation Act would render the proviso of Section 34 invalid under the provisions of the Michigan Constitution relating to the powers of the judiciary, stating (301 Mich. 351, at pages 359-360; Record pp. 186-7):

> "Further, it may be noted that section 38 of the Michigan unemployment compensation statute

> (Comp. Laws Supp. 1940, Sec. 8485-78, Stat. Ann. 1940 Cum. Supp. Sec. 17.540) provides for a review of both questions of fact and of law by the circuit court, and 'An appeal may be had from the decision of said circuit court in the same manner as provided by the laws of this State with respect to appeals from circuit courts.' Article 7, Sec. 10, of the Constitution of this State (1908), in part provides: 'Circuit courts shall have * * * appellate jurisdiction from all inferior courts and tribunals and a supervisory control of the same.' To sustain appellants' contention as to the effect of the double affirmation clause of the act would be to deprive the courts of any effective review or supervisory control of awards of compensation to applicants therefor regardless of whether or not they were entitled to same under the terms of the act. So construed the double affirmation provision in the statute would be violative of the above-quoted constitutional provision."

Nowhere in this record does it appear that the decision by the court below of the Federal question to which petitioners refer was necessary for a determination of the cause or was actually made. The contention of petitioners to the contrary was expressly brought to the attention of the Supreme Court of Michigan in the motion of petitioners by which they sought to secure from that Court a certificate in the following form:

> "That this court held said provision to be invalid on the sole ground that it was violative to the due process clause of the Fourteenth Amendment to the Constitution of the United States" (Record p. 193).

The Supreme Court of Michigan denied this motion (Record p. 194). The record is, therefore, conclusive upon this point.

The Supreme Court of Michigan has settled the construction to be given to the Michigan Unemployment Com-

pensation Act. It first considered in the case of *Smith v. Ingham Circuit Judge,* 297 Mich. 478, and in the related case of *Chrysler Corporation v. Smith,* 297 Mich. 438, the contention of the petitioners, that where claims filed under the Michigan Unemployment Compensation Act have been allowed by two of the administrative tribunals, the provisions of Section 34 of the Michigan Unemployment Compensation Act should be construed to require the payment of such claims, notwithstanding a decision by a reviewing court that the claimants are disqualified. In *Smith v. Ingham Circuit Judge,* 297 Mich. 478, the court stated:

> "PER CURIAM. This is a petition for mandamus to compel Leland W. Carr, Ingham circuit judge, to vacate an order staying the payment of certain unemployment benefits by the Michigan unemployment compensation commission pending the determination of an appeal. The appeal in that case has been heard at the October session of court and the questions raised are decided in *Chrysler Corp. v. Smith,* ante, 438 (135 A. L. R. 900). The purpose in seeking mandamus is to obtain the payment of benefits pending decision on the above appeal, without regard to the ultimate decision as to the rights of the parties.
>
> "Writ denied. No costs awarded, this being a question of public interest."

The decision of the questions raised in *Smith v. Ingham Circuit Judge,* 297 Mich. 478, is set forth in the following language from the opinion of Mr. Justice Wiest in *Chrysler Corporation v. Smith,* 297 Mich., 438, 452-3:

> "Pending judicial determination of the rights of claimants, the circuit court stayed payments out of the fund and denied claimants' motion to vacate the order.
>
> "Claimants invoked that part of section 34 of the act, reading:

> " 'Provided, That if the final decision of a referee affirms the initial or an amended determination, or the appeal board affirms the final decision of a referee, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's experience record shall be charged with benefits so paid.'
>
> "This, if held applicable in the instance at bar, would render administrative action superior to recognized judicial power in the premises and constitute the provisions relative to appeal and court procedure a nullity. If construed, as applicable in this instance, it would render due process of law, expressly recognized and provided for in the act, nugatory and a senseless gesture. The circuit judge held the provision inapplicable, and we join in such holding without spending time in an endeavor to note its place, if any, under other circumstances."

Likewise, in the concurring opinion of Mr. Justice Boyles, in *Chrysler Corporation v. Smith,* 297 Mich. 438, 477, it is stated:

> "* * * It is argued by claimants that under section 34 of the act they are entitled to payment regardless of pending court proceedings, when applications for benefits have been 'twice affirmed', i.e., (1) by the referee, and (2) by the appeal board. The effect of such a construction would render payments a moot question pending court decision. Section 34 cannot be construed to deprive this court of jurisdiction to review questions of law and (within proper limits) questions of fact, especially where a construction of the meaning of the act is involved. Section 38 expressly provides for review by the courts."

The Supreme Court of Michigan accordingly determined in *Smith v. Ingham Circuit Judge,* 297 Mich. 478, and in *Chrysler Corporation v. Smith,* 297 Mich. 438, that the

proviso of Section 34 must be read in light of the provisions of Section 38, that this proviso is inapplicable in a case where the courts have determined that the petitioners are disqualified under Section 29(d), and that the courts have jurisdiction to stay payment of benefits pending a final determination, and to render an enforcible judgment controlling such payment without regard to the allowance of claims by the Referee and the Appeal Board of the Michigan Unemployment Compensation Commission. This construction of the Michigan Unemployment Compensation Act eliminated the questions under the State and Federal Constitutions which might have been presented in this case had the contention of the petitioners as to the effect of Section 34 been adopted.

On the appeal to the Supreme Court of Michigan in this case by the petitioners, they ignored its prior decisions and again urged a construction of Section 34 which would require the payment of benefits to them, although they were held to be disqualified. The court, in affirming the judgment of the Circuit Court, quotes with approval from the opinions in *Chrysler Corporation v. Smith*, 297 Mich. 438, and bases its adjudication of this issue on its construction of the provisions of the Act. This is evident from the following statement in its opinion (301 Mich. 351, 358; Record p. 185):

> "We are not in accord with appellants' contention, as stated in their brief, that following double affirmation: 'Subsequent appeals * * * under the act were *merely* for the purpose of determining whether the experience record of the Chrysler Corporation should be charged with payments so made.' The act does not expressly so provide, and it should not be so construed. Instead of the right of such appeals being granted solely or 'merely' for the purpose of enabling the Chrysler Corporation to have determination of whether its experience record

> should be charged with the payments made, we think this is but another reason for granting the right of subsequent appeals in addition to that of protecting the compensation fund provided by the Chrysler Corporation and others from maladministration or unlawful dissipation."

The construction given the relevant provisions of the Michigan Unemployment Compensation Act is the basis of the decision by the Supreme Court of Michigan that the proviso of Section 34 does not give the petitioners a right to the payment of benefits. This is a question of state law and is binding on this court. *Quong Ham Wah Co. v. Industrial Accident Commission of California, supra; Neblett v. Carpenter, supra.*

The argument of the petitioners in their brief as to the validity of the proviso of Section 34, if construed to give them a right to the payment of benefits without regard to their disqualification, is without foundation.

We submit that nothing in the Constitution of the United States or in any rule of constitutional law requires the State of Michigan, either directly or by applying the so-called "double affirmation clause" which the Supreme Court of Michigan has held to be inapplicable to this case, to pay out of its unemployment compensation fund unemployment compensation benefits to claimants whom the Supreme Court of Michigan has held to be disqualified for benefits.

It is respectfully submitted that the petition for writ of certiorari should be denied.

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